IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.4875 of 2006
Date of Decision : October 17, 2006.

Amarjit Singh Samra ..... Petitioner

Vs.

Gurbachan Singh Mehat and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.R.S.Ghuman, Advocate
for the petitioner.

Mr.P.K.Mutneja, Advocate
for the respondent.

* * *

P.S.Patwalia, J. (Oral) :

When notice of motion was issued in this revision petition, I had passed the following order on 14.09.2006 :-

> *"After hearing learned counsel for the petitioner, I find no error in the view taken by the trial Court that the civil proceedings out of which the instant revision petition arises need not be stayed till the disposal of the criminal case and not*

accepting the prayer that the civil suit should be tried along with the criminal case.

Notice of motion for 9.10.2006 limited to the extent as to whether or not the petitioner, defendant no.1, in the suit should be permitted to lead additional evidence by producing a Clerk from the office of Commissioner, Jalandhar Division, Jalandhar.

Learned counsel prays that he may be allowed to serve the respondents by dasti process. Additionally he prays that he may be permitted to serve the respondents through their counsel in the trial Court. The request is allowed. Let dasti notices be given to the learned counsel. Additionally he would be at liberty to serve the respondents through their counsel in the trial Court."

Learned counsel for the petitioner contends that one of the important issues raised in the suit is as to whether or not the plaintiff and defendants no.5 and 6 had executed a Power of Attorney dated 7.6.1999 in favour of defendant no.1. Learned counsel for the petitioner, defendant no.1 in the suit had filed an application for leading additional evidence to produce the Clerk from the office of Commissioner, Jalandhar Division, Jalandhar to prove the embossing of the Power of Attorney from the said office and also to examine the Clerk. This application has been declined by the trial court.

Learned counsel for the petitioner-defendant no.1 has contended that even if the plaintiffs are not denying the factum that the Attorney is duly embossed yet it is very important for him to examine the Clerk to lead evidence regarding the attending circumstances leading to the embossing of the Power of Attorney. On the other hand, learned counsel for the respondents-plaintiffs in the suit contends that this application is merely another effort to delay the proceedings in the suit as the plaintiffs are not disputing the factum that Power of Attorney stands duly embossed.

On a query from the Court, learned counsel contends that the suit is now fixed at the stage of rebuttal and arguments. After hearing learned counsel for the parties I am of the opinion that the entire case set up by the plaintiffs is that defendant no.1 had sold his land on the basis of forged Power of Attorney. Thus the factum whether the Power of Attorney is genuine or not is crucial to the whole controversy. Therefore I am of the opinion that defendant no.1 should be permitted to examine the Clerk from the office of Commissioner, Jalandhar Division, Jalandhar. The trial court will give him one effective opportunity for the aforesaid purpose. Thereafter the plaintiffs would also be given opportunity to lead any evidence in rebuttal which they may deem appropriate.

With the aforesaid observations the present revision petition is allowed to this limited extent only.

October 17, 2006 (P.S.Patwalia)
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